IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. **1687-2002**

Date of reservation: **31.5.2007**

Date of Decision : 13.6.2007

Baldev Raj …Petitioner.

Versus:

N.H.P.C. & others …Respondents.

Coram**:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner : Mr. Surinder Sharma, Advocate.

For respondents 1 to 4: Mr. K. D. Shreedhar, Advocate.

Sanjay Karol, J.

Petitioner herein has prayed for quashing of the office order dated 6th of March, 1993 dismissing the petitioner from service. While serving with the respondent as Security Guard, petitioner was charge-sheeted vide memorandum dated 7.6.1990 (Annexure R-5) with the following articles of charge :-

> "That the said Shri Baldev Raj, while functioning as Security Guard under Electrical Circle Khairi remained willfully absent from duties without prior intimation and sanction of leave w.e.f. 25.4.1990 till date. He has been warned to abstain from such

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

practices in past also. Thus, Shri Baldev Raj, Security Guard has failed to maintain absolute integrity and devotion of duty. His behaviour is thus in contravention to the conduct prescribed in Rule No. 28.47 and 28.54 of Model Standing Orders."

As per the statement of imputation in respect of the aforesaid charge, it was mentioned that his previous record showed that he had absented himself w.e.f. 30.1.89 to 5.2.89, 8.2.89 to 20.2.89, 24.2.89 to 27.2.89 & 1.3.89 to 4.3.89 = 28 days, which was subsequently sanctioned by the competent authority and further remained absent w.e.f. 27th & 28.3.89, 22.4.89 to 11.6.89, 17 to 19.6.89, 21.6.89, 5.7.89, 21 to 26.7.89, 1 to 6.8.89, 16 & 17.8.89, 4 to 6.9.89, 27 to 30.10.89, 1.11.89, 18.11.89 to 21.11.89, 3.12.89, 15 & 16.12.89, 18.12.89, 21.12.89, 30.12.89, 1.1.90 to 5.2.90. Even this unauthorized period was regularized by the competent authority subsequently with a warning that he should not remain absent without proper and prior intimation to the superiors. Petitioner was warned in writing to improve his conduct but inspite of his having tendered several apologies, he again absented himself w.e.f. 25th April, 1990.

After due compliance of all the codal formalities as also the principles of natural justice, the Enquiry Officer submitted his report dated 19th of March, 1991 (Annexure R-10) holding that the petitioner has accepted all the charges. He further recorded that petitioner has assumed that he would not

repeat the same in future and has requested for a sympathetic view in the matter.

However, memorandum dated 12.9.1991 (Annexure R-11) was issued to the petitioner proposing the penalty of dismissal from service and asking him to show cause as to why the penalty be not imposed. Based on the said Enquiry report as also the other material, the disciplinary authority awarded the punishment of *'dismissal from service'* vide office order dated 6.3.1993 (Annexure R-12) after objectively considering the entire material on record.

Petitioner thereafter preferred an appeal, which was duly considered by the appellate authority and after examining the entire material on record, the same was dismissed vide order dated 15th of May, 1993 (Annexure R-16). The order shows that even though the appeal was filed beyond the stipulated period, however, the same was not only entertained but considered sympathetically. However, keeping in view the petitioner's past conduct, it was not appropriate to interfere.

Learned counsel for the petitioner has argued that the penalty is highly disproportionate to the alleged misconduct and that no adequate opportunity has been afforded to the petitioner before awarding the punishment, he has pressed for the direction that the petitioner be re-engaged as Security Guard with all consequential benefits like arrears of salary and seniority etc. or in the alternative, respondent be directed to release the

pensionary / retiral benefits to the petitioner along with retrospective interest.

It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. (**State of A.P. vs. S.Sree Rama Rao,** reported in AIR 1963 SC 1723).

It is also settled law that this Court would not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

Further in **Chairman and Managing Director, United Commercial Bank and others** vs. **P.C.Kakkar,** reported in (2003) 4 SCC 364, it has been held as under:-

> "12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the

court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

"15. ….. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law…."

On the issue of punishment being disproportionate to the misconduct alleged to have been committed by the petitioner, the ratio of law laid down of the apex Court in **State of UP vs. Sheo Shanker Lal Srivastava and others,** reported in (2006) 3 SCC 276, is also reproduced hereinbelow:-

"22. It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

Record shows that the petitioner has been habitual in absenting himself without prior permission or intimation. Respondents are carrying out the work of construction of Hydroelectric Power Project in the remotest corner of the State of Himachal Pradesh. Respondents have engaged the services of persons like petitioner to guard the valuable machinery which the respondents are using for the construction of dam. Petitioner's record shows that he has been absenting continuously without leave. In fact, before the Enquiry Officer, he has admitted this fact. He did not bother to mend his ways inspite of adequate notices, opportunities and warnings given to him. The authorities below have sympathetically considered his case and only after considering the entire material objectively, they have come to the conclusion that he is no longer to be retained in service and consequently the order of dismissal was passed.

I have seen the record and am satisfied that the action taken against the petitioner is totally justified. Adequate opportunities have been given to the petitioner of the disciplinary proceedings. He has admitted his guilt, apologized and requested for pardon. I agree with the reasoning and the finding of the authorities below.

I see no reason to interfere with the order passed by the authorities below based on adequate material, cogent and

reliable evidence. No infirmity or illegality, shocking the conscious of this Court, has been brought to notice.

Learned counsel for the respondents has also argued that in view of ratio of law laid down in ***Cheripalli Madar*** V. ***Assistant Division Engineers and Others*** (2005 (11) SCC 546), ***SDO. Grid Corporation of Orissa Ltd. & Others*** . V. ***Timudu Oram*** (2005 (6) SCC 156) and ***Suresh Chand*** vs. ***Union of India and Others*** (2004 (13) SCC 563), this Court should not entertain the petition as it is hopelessly time barred. I am in agreement with the learned counsel for the respondents that the petition even otherwise is hopelessly belated, however, I have considered the petition on merits and decided as such. Respondents have stated that no amount towards retrial benefits is due and payable and infact the entire amount already stand paid to the petitioner.

No other point was urged by the learned counsel for the parties.

In view of the aforesaid observations, the writ petition is dismissed.

June 13, 2007 **(Sanjay Karol),**
(rana) **Judge.**